

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

RICHARD AARON FLAHERTY, #802140 §

VS. § CIVIL ACTION NO. 4:09cv17

DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Don D. Bush, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed without prejudice as successive. Petitioner filed objections.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit. In his objections, Petitioner asserts that his Rule 60(b)(6) motion should not have been construed as a successive petition. However, Petitioner's earlier habeas petition was closed by final judgment on March 1, 2004, Cause No. 4:01-cv-17. Rule 60 requires that a motion for relief from a judgment or order be filed within a reasonable time. This Court does not consider well over five years from final judgment to be a reasonable amount of time.


The Court notes that Petitioner did not object in his prior 2254 petition to the alleged failure of the Court to reach the merits of two of his issues. The Fifth Circuit denied his certificate of appealability and the United States Supreme Court denied his writ of certiorari. In conclusion, Petitioner has failed to show that the Report is erroneous. The Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice.

Petitioner may file a successive petition if permission from the Fifth Circuit to do so is shown. It is further

ORDERED that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 10th day of September, 2009.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE